

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 11974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOSEPH HOGABOOM

(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

ROBERT P. COCCO, P.C.
1500 WALNUT ST., SUITE 900
PHILADELPHIA, PA 19102 215-351-0200

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed NEW YORK

(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 U SC		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Law		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgments Act	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	PROPERTY RIGHTS	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (13 95 ff)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIW C/DIW W (405 (g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Force Insure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		FEDERAL TAX SUITS	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS -Third Party 26 USC 7609	<input checked="" type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights			
		<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Magistrate Judgment

(PLACE AN "X" IN ONE BOX ONLY)

Transferred from another district

Appeal to District Judge from

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

§47 U.S.C. §227 et seq

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in Complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

NOV 16 2015

CMR

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

JOSEPH HOGABOOM,

: CIVIL ACTION

v.

: NO.

15 6146


NCO FINANCIAL SERVICES, INC. et al.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (X)

11/12/15
(Date)


Attorney-at-law

ROBERT P. COCCO, ESQ.
Attorney for Plaintiff

NOV 16 2015

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA -- DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 204 Trailview Drive Cary, NC 27513-1621.

15 6146

Address of Defendant: 507 Prudential Road, Horsham, PA 19044.

Place of Accident, Incident or Transaction: 204 Trailview Drive Cary, NC 27513-1621.
(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY: None.

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of factor grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability - Asbestos
9. ☐ All other Diversity Cases

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Robert P. Cocco, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: 11/12/15 Robert P. Cocco
Attorney-at-Law

61907
Attorney I. D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/12/15 [Signature]
Attorney-at-Law

61907
Attorney I.D.#

NOV 16 2015

\$400
CMR

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH HOGABOOM,

Plaintiff,

CASE NO.:

15 6146

-vs-

NCO FINANCIAL SYSTEMS, INC.,

Defendant.

COMPLAINT

JURISDICTION AND VENUE

FILED
NOV 16 2015
MICHAEL J. LONZ, Clerk
By _____

1. Plaintiff brings this action to recover statutorily prescribed damages for acts on the part of Defendant in violation of the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, *et seq.* (hereafter “TCPA”), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereafter “FDCPA”), and the North Carolina Collection Agency Act § 58-70-1, *et seq.* (hereafter “NCCAA”).

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 as this case presents a federal question, and supplemental jurisdiction under 28 U.S.C. § 1367 for the related state law claims.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that this is the judicial district in which the Defendant resides.

PARTIES

4. Plaintiff, JOSEPH HOGABOOM, is and was at all material times a natural person over the age of eighteen (18), who resides in Cary, Wake County, North Carolina, and is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3).

S

5. Plaintiff JOSEPH HOGABOOM is the “called party” with respect to the calls placed to his cellular telephone number, (919) 461-0281, as further described herein. See In re Rules and Regulations Implementing the TCPA of 1991, Declaratory Ruling and Order, CG Docket No. 02–278, WC Docket No. 07–135, FCC 15–72, ¶ 73, 2015 WL 4387780 (July 10, 2015) (“2015 FCC Order”).

6. At all times material, Defendant, NCO FINANCIAL SYSTEMS, INC., (hereafter “NCO”), was and is a corporation engaged in the business of collecting debts within the Commonwealth of Pennsylvania and the State of North Carolina, with its principal place of business located at 507 Prudential Road, Horsham, PA 19044.

7. At all material times, Defendant sought to collect an alleged debt from Plaintiff that arose from a transaction incurred for personal, family or household purposes, and was therefore operating as a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. §1692a(6).

8. At all times material hereto, Defendant NCO sought to collect an alleged debt from Plaintiff JOSEPH HOGABOOM that arose from a transaction allegedly incurred for personal, family or household purposes, related to an account Plaintiff briefly had with DirecTV for residential service, and is therefore a “consumer debt” as that term is defined under 15 U.S.C. § 1692a(5).

FACTUAL ALLEGATIONS

9. On or about May 20, 2009, Plaintiff called DirecTV to cancel his service, which was within a ninety (90) day trial promotional plan, and spoke with a DirecTV representative identified as “Mary.” The Plaintiff was advised that since he did not keep the service for 90 days,

DirecTV intended to reverse the \$50 promotional credit, resulting in a balance being charged to Plaintiff. Plaintiff protested DirecTV's reversal of the promotional credit, and the resulting balance, and stated to DirecTV's representative that DirecTV employed a clearly deceptive sales technique aimed at retaining customers, that he felt he had been lied to, and that he did not want to be contacted by DirecTV with additional offers or efforts to collect the resulting alleged debt.

10. On or about May 13, 2009, Plaintiff contacted the North Carolina Attorney General's office and spoke with a representative regarding DirecTV's aforementioned conduct in rescinding the \$50 promotional credit, as described above. Plaintiff was advised that the NC Attorney General's Office had observed a "very systematic pattern of poor decisions from DirecTV" and that the reversal of the promotional credit was another instance of DirecTV's deceptive sales practices, and that the NC Attorney General's Office had a back-log of complaints against DirecTV, including a "very high level of unresolved complaints."

11. Thereafter, Plaintiff wrote a letter to the Better Business Bureau (hereafter "BBB") regarding the above described conduct on the part of DirecTV.

12. On or about May 26, 2009, Plaintiff received a response to his complaint with the BBB which enclosed a statement from DirecTV Office of the President, apologizing for the above described billing issues, stating that the promotional credit would be reapplied to zero the account balance, and that Plaintiff was actually entitled to a refund of \$9.09, and DirecTV would expedite the processing of the refund on Plaintiff's behalf, which would be received within ten (10) days.

13. Subsequent to the above described communication from the DirecTV Office of the President, expressly and unambiguously waiving any alleged balance owed on Plaintiff's

DirecTV account, Defendant NCO, purchased, acquired, took assignment of, or was otherwise employed by DirecTV to collect an alleged debt with respect to the Plaintiff's DirecTV account.

14. In or about May of 2011, Defendant NCO began initiating autodialed calls to Plaintiff's cellular telephone number, (919) 461-0281, in an effort to collect a debt allegedly owed on the aforementioned DirecTV account.

15. Upon answering several of these calls, Plaintiff explained the above described history regarding the DirecTV account, including his communications with the NC Attorney General's Office, his written complaint to the Better Business Bureau, and the subsequent response to Plaintiff's BBB complaint from DirecTV, waiving any balance owed, bringing the balance to zero, and confirming that Plaintiff was entitled to a refund. Plaintiff further instructed Defendant's representatives on numerous such occasions to stop placing calls to his aforementioned cellular telephone number, and to correct or withdraw any adverse reporting of the alleged debt to the Credit Reporting Agencies.

16. Thereafter, despite Plaintiff having explained that he does not owe the debt NCO was calling to collect, and despite his unambiguous instructions to stop calling, Defendant continued initiating calls to Plaintiff's aforementioned cellular telephone number in an effort to collect the above described alleged debt, disregarding Plaintiff's instructions to cease placing such calls.

17. Moreover, despite Plaintiff providing Defendant's representatives with the above described history of the DirecTV billing issue, and the unambiguous written waiver of the alleged balance by DirecTV's Office of the President, and Plaintiff's demand that NCO correct or withdraw any adverse reporting of the alleged debt to the Credit Reporting Agencies, Plaintiff

was advised by Defendant's representatives that if Plaintiff did not pay the alleged debt, the negative reporting would remain on his credit report for seven (7) years.

18. Defendant intentionally harassed and abused the Plaintiff on numerous occasions by and through their agents and representatives, including but not limited to calling several times during one day and on back to back days, with such frequency as can reasonably be expected to harass the Plaintiff.

19. To date, Defendant has placed in excess of four hundred (400) calls to Plaintiff's aforementioned cellular telephone number.

20. Despite Plaintiff demanding that Defendant stop placing calls to his aforementioned cellular telephone number, and advising Defendant that he does not owe the money it was seeking to collect, Defendant, in an effort to collect the above described alleged debt, proceeded to engage in conduct in violation of the TCPA, FDCPA and NCCAA, as described herein.

21. The telephone calls at issue were placed by Defendant NCO using an "automated telephone dialing system" as specified by the TCPA, 47 U.S.C. § 227(a)(1), which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers; and/or which has the capacity to dial numbers from a list without human intervention (hereafter "ATDS" or "autodialer").

22. Defendant initiated each of the calls at issue to Plaintiff's aforementioned cellular telephone number without the "prior express consent" of Plaintiff as specified by the TCPA, 47 U.S.C. § 227(b)(1)(A).

23. Alternatively, Defendant initiated each of the calls at issue to Plaintiff's aforementioned cellular telephone number subsequent to Plaintiff's revocation of any "prior express consent" Plaintiff may have previously provided to Defendant, or that Defendant mistakenly believed it had.

24. Additionally, none of the telephone calls at issue were placed by Defendant to Plaintiff's aforementioned cellular telephone number for "emergency purposes" as specified by the TCPA, 47 U.S.C. §227 (b)(1)(A).

25. Defendant consents of and has knowledge and control of the collection activities of its agents and representatives, including supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors and/or contractors with respect to the collection activity alleged herein.

26. Defendant NCO has a corporate policy of initiating debt collection calls using an automatic telephone dialing system and/or a prerecorded or artificial voice message, just as it did when calling the Plaintiff's aforementioned cellular telephone number, as described herein.

27. Defendant NCO willfully and/or knowingly violated the TCPA with respect to the Plaintiff.

28. Despite actual knowledge of its wrongdoing, Defendant NCO continued its campaign of harassment and abuse.

29. Defendant NCO's corporate policy provided no means for the Plaintiff to have his number removed from the call list.

30. Defendant NCO intentionally harassed and abused the Plaintiff on numerous occasions by calling several times per day, and on back to back days, with such frequency as can

reasonably be expected to harass, even after Plaintiff repeatedly told Defendant's representatives to stop calling.

31. Defendant NCO has a corporate policy to harass and abuse individuals despite actual knowledge that the called parties do not owe the alleged debts that are the subject of NCO's collection calls.

32. Defendant NCO followed its corporate policy when placing the calls at issue to Plaintiff's aforementioned cellular telephone number.

33. Defendant NCO has been the recipient of numerous complaints from debtors, alleged debtors, and non-debtors across the country, similar to those alleged in this action by Plaintiff.

34. Defendant NCO has, or should be in possession and/or control of call logs, account notes, auto dialer reports and/or other records that detail the exact number of calls made to Plaintiff over the relevant time period.

35. As a direct and proximate result of Defendant's actions, Plaintiff has sustained mental pain and suffering, emotional distress, mental anguish, inconvenience, and loss of capacity for the enjoyment of life.

36. All conditions precedent to the filing of this action have occurred.

COUNT I
VIOLATION OF THE TCPA AGAINST NCO

37. Plaintiff re-alleges and incorporates by reference all prior allegations as if fully set forth herein.

38. None of the calls at issue were placed by Defendant to Plaintiff's aforementioned cellular telephone number with the "prior express consent" of Plaintiff, as specified by the TCPA, 47 U.S.C. § 227(b)(1)(A).

39. Alternatively, Defendant initiated each of the calls at issue to Plaintiff's aforementioned cellular telephone number subsequent to Plaintiff's revocation of any "prior express consent" Plaintiff may have previously provided to Defendant, or that Defendant mistakenly believed it had.

40. Additionally, none of the calls at issue were placed by Defendant to Plaintiff's aforementioned cellular telephone number for "emergency purposes" as specified by the TCPA, 47 U.S.C. §227 (b)(1)(A).

41. Defendant willfully and/or knowingly violated the TCPA with respect to Plaintiff by repeatedly placing non-emergency calls to Plaintiff's aforementioned cellular telephone number using an automated telephone dialing system and/or prerecorded or artificial voice message without Plaintiff's prior express consent, and after Plaintiff instructed Defendant to discontinue calling Plaintiff, as specifically prohibited by the TCPA, 47 U.S.C. §227(b)(1)(A)(iii).

42. The TCPA provides Plaintiff with a private right of action against Defendant for its violations of the TCPA, as described herein, pursuant to 47 U.S.C.A. § 227(b)(3), and permits both injunctive relief in addition to statutory damages.

COUNT II - VIOLATION OF THE FDCA AGAINST NCO

43. Plaintiff re-alleges and incorporates by reference all prior allegations as if fully set forth herein.

44. Plaintiff has been the object of collection activity by Defendant arising from an alleged consumer debt.

45. Defendant is a “debt collector” as defined by the FDCPA.

46. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692d by engaging in conduct in connection with the collection of a debt, the natural consequence of which is to harass, oppress, or abuse Plaintiff.

47. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692d(5) by causing Plaintiff’s cellular telephone number to ring or engaging Plaintiff in telephone conversations repeatedly or continuously with the intent to annoy, abuse, or harass Plaintiff at the called number.

48. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692d(6) by calling Plaintiff’s aforementioned cellular telephone number and hanging up prior to or as soon as the Plaintiff or the Plaintiff’s voice mail answered the call, in such a way as to fail to provide a meaningful disclosure of its identity.

49. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692e(2)(a) by failing to accurately represent the character, amount, or legal status of any debt.

50. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692e(10) by the use of any false representation or deceptive means to collect or attempt to collect a debt from Plaintiff or to obtain information concerning Plaintiff.

51. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692e(11) by calling Plaintiff’s aforementioned cellular telephone number and hanging up prior to or as soon as the Plaintiff or the Plaintiff’s voice mail answered the call, in such a way as to fail to

disclose that the communication was from a debt collector.

52. Defendant engaged in an act or omission prohibited under 15 U.S.C. §1692f by using unfair or unconscionable means to collect or attempt to collect a debt from Plaintiff.

53. Defendant's acts and omissions as described herein have directly and proximately resulted in Plaintiff's prior and continuing sustaining of damages as described by 15 U.S.C. §1692 including, but not limited to: statutory damages, actual damages in the form of emotional pain and suffering, fear, worry, embarrassment, humiliation and loss of the capacity for the enjoyment of life, and attorneys' fees and costs.

COUNT III - VIOLATION OF THE NCCAA AGAINST NCO

54. Plaintiff re-alleges and incorporates by reference all prior allegations as if fully set forth herein.

55. The Plaintiff is a "person" as the term is defined by N.C. Gen.Stat. § 58-70-6(4).

56. The Defendant is a "collection agency" as the term is defined by N.C. Gen.Stat. § 58-70-15. Defendant is duly licensed to collect debt in the state of North Carolina pursuant to N.C. Gen.Stat. § 58-70-1.

57. Defendant engaged in an act or omission prohibited under NC Gen. Stat. § 58-70-95(3) by threatening to make false accusations to another person, including any consumer reporting agency, that Plaintiff has not paid or has willfully refused to pay a just debt.

58. Defendant engaged in an act or omission prohibited under NC Gen. Stat. § 57-70-100 by engaging in conduct in connection with the collection of a debt, the natural consequence of which is to harass, oppress, or abuse Plaintiff.

59. Defendant engaged in an act or omission prohibited under NC Gen. Stat. § 57-70-100(2) by calling Plaintiff's aforementioned cellular telephone number and hanging up prior to or as soon as the Plaintiff or the Plaintiff's voice mail answered the call, in such a way as to fail to provide a meaningful disclosure of its identity.

60. Defendant engaged in an act or omission prohibited under NC Gen. Stat. § 57-70-100(3) by causing Plaintiff's cellular telephone number to ring or engaging Plaintiff in telephone conversations with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances or at times known to be times other than normal waking hours of the person.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

- A. For an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against Defendant;
- B. For an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against each and every Defendant and for each Plaintiff;
- C. for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against each and every Defendant and for Plaintiff;
- D. for defendants' negligent violations of 47 U.S.C. §227(b)(1), \$500.00 in statutory damages for each and every call that violated the TCPA, pursuant to 47 U.S.C. §227(b)(3)(B);
- E. for defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(1), up to \$1,500.00 for each and every call that violated the TCPA, pursuant to 47 U.S.C. §227(b)(3)(B);

F. for such other and further relief as may be just and proper.

Dated: Nov. 9, 2015



ROBERT P. COCCO, P.C.

Attorney for Plaintiff

By: Robert P. Cocco, Esquire

Pa. Id. No. 61907

1500 Walnut Street, Suite 900

Philadelphia, PA 19102

215-351-0200

Counsel for Plaintiff



David P. Mitchell, Esq.

Florida Bar No. 067249

MANEY & GORDON, P.A.

101 East Kennedy Blvd., Suite 3170

Tampa, Florida 33602

Telephone: (813) 221-1366

Fax: (813) 223-5920

David@MitchellConsumerLaw.com

D.Mitchell@maneygordon.com

V.Marrero@maneygordon.com

Counsel for Plaintiff

Pro hac vice pending